

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

NORTH AMERICAN BUTTERFLY §
ASSOCIATION d/b/a THE §
NATIONAL BUTTERFLY CENTER, §
AND MARIANNA TREVINO §
 Plaintiffs §
 §
 §
VS. §
 §
 §
NEUHAUS & SONS, LLC, BRIAN §
KOLFAGE, AND WE BUILD THE §
WALL INC. et al §
 Defendants §

CASE NO. 7:19-cv-00411

**DEFENDANTS FISHER INDUSTRIES AND FISHER SAND AND GRAVEL CO.'S
FIRST AMENDED ORIGINAL ANSWER**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW FISHER INDUSTRIES and FISHER SAND AND GRAVEL CO., Defendants in the above-entitled and numbered cause, file this First Amended Origin Answer, subject to Defendant's Second Amended Motion to Dismiss, and would respectfully show this court as follows:

FIRST DEFENSE

With specific reference to the allegations contained in the Plaintiffs' Third Amended Complaint, Defendants would respond as follows:

1. Upon information and belief, the allegations contained in Paragraph 1 of Plaintiffs' Third Amended Complaint are admitted.
2. Defendants lack the information to admit or deny the allegations contained in Paragraph 2 of Plaintiffs' Third Amended Complaint.
3. The allegations contained in Paragraph 3 of Plaintiffs' Third Amended Complaint are admitted.
4. The allegations contained in Paragraph 4 of Plaintiffs' Third Amended Complaint are not against these Defendants and do not require a denial or an admission from these Defendants.
5. The allegations contained in Paragraph 5 of Plaintiffs' Third Amended Complaint are not against these Defendants and do not require a denial or an admission from these Defendants.
6. The allegations contained in Paragraph 6 of Plaintiffs' Third Amended Complaint are admitted.
7. The allegations contained in Paragraph 7 of Plaintiffs' Third Amended Complaint are admitted to the extent that Fisher Industries has made an appearance in this matter but denied to the extent that it is a subsidiary of Fisher Sand. Fisher Industries is a trade name of Fisher Sand and Gravel Co.
8. The allegations of Paragraph 8 are denied. Defendants believe jurisdiction is appropriate in this Court.

9. The venue allegations contained in Paragraph 9 of Plaintiffs' Third Amended Complaint are admitted.

10. Upon information and belief, the allegations contained in Paragraph 10 of Plaintiffs' Third Amended Complaint are admitted.

11. The allegations contained in Paragraph 11 of Plaintiffs' Third Amended Complaint are admitted as to the contents of the property records in Hidalgo County; the remainder of the allegations in Paragraph 11 of Plaintiffs' Third Amended Complaint are denied.

12. The allegations contained in Paragraph 12 of Plaintiffs' Third Amended Complaint alleging that Defendant WBTW and/or Defendant Kolfage have acted as the fundraising arm or agents of Defendants is denied. Defendants admit that a subsidiary TGR Construction, Inc., a subsidiary of Fisher Sand and Gravel, Co. planned and constructed the border fence at issue in this matter. The remainder of the allegations are denied.

13. The allegations contained in Paragraph 13 of Plaintiffs' Third Amended Complaint are denied.

14. The allegations contained in Paragraph 14 of Plaintiffs' Third Amended Complaint are denied.

15. Defendants admit that they contend they can execute the construction of a border fence more rapidly than the "government" and at a lesser cost. The remainder

of the allegations contained in Paragraph 15 of Plaintiffs' Third Amended Complaint are denied.

16. The allegations contained in Paragraph 16 of Plaintiffs' Third Amended Complaint are denied.

17. The allegations contained in Paragraph 17 of Plaintiffs' Third Amended Complaint are denied.

18. The allegations contained in Paragraph 18 of Plaintiffs' Third Amended Complaint are denied.

19. The allegations contained in Paragraph 19 of Plaintiffs' Third Amended Complaint are denied.

20. The allegations contained in Paragraph 20 of Plaintiffs' Third Amended Complaint are denied.

21. No response is necessary to Paragraph 21 of Plaintiffs' Third Amended Complaint but to the extent necessary incorporate the foregoing denials and admissions in response to this paragraph.

22. Defendants admit that the border fence constructed by TGR Construction, Inc. is approximately three (3) miles long, and that the design includes approximately eighteen (18) foot high galvanized steel bollards with a spacing of approximately five (5) Inches. Defendants admit the Plaintiffs have attached Exhibits "C" and "D" to Plaintiffs' Third Amended Complaint, but deny the contents of these exhibits.

23. Defendants deny the opinions expressed in Exhibit "C" and Exhibit "D" to Plaintiffs' Third Amended Complaint. The remaining allegations in Paragraph 23 of Plaintiffs' Third Amended Complaint are denied.

24. Defendants deny the allegations contained in Paragraph 24 of Plaintiffs' Third Amended Complaint.

25. The allegations contained in Paragraph 25 of Plaintiffs' Third Amended Complaint are denied.

26. The allegations contained in Paragraph 26 of Plaintiffs' Third Amended Complaint are denied.

27. The allegations contained in Paragraph 27 of Plaintiffs' Third Amended Complaint are denied.

Incorporating the foregoing denials and admissions, the allegations contained within Plaintiffs' prayer to the Court do not require an admission or denial.

SECOND DEFENSE

Defendants would show there is a defect of parties. Specifically, Defendant would show that Fisher Industries is not a legal entity; it is a trade name used by Fisher Sand and Gravel, Co. Further, the subject fence was constructed by TGR Construction, Inc., a subsidiary of Fisher Sand and Gravel, Co.

WHEREFORE, PREMISES CONSIDERED, Defendants request that Plaintiffs' prayer for equitable relief, including injunctive relief, for attorneys' fees, and for all other

relief be denied, and that Defendants have judgment in their favor including attorneys' fees and costs.

/s/ Mark J. Courtois

MARK J. COURTOIS
Texas Bar No. 04897650
Email: mjcourtous@fllp.com
Direct: 713-620-7226
FUNDERBURK FUNDERBURK COURTOIS, LLP
2777 Allen Parkway, Suite 1000
Houston, Texas 77019
(713) 526-1801
(713) 526-2708 - FAX

Attorneys for FISHER INDUSTRIES and FISHER
SAND AND GRAVEL CO.

CERTIFICATE OF SERVICE

I, MARK J. COURTOIS, hereby certify that a true and correct copy of the foregoing instrument has been forwarded to all known Filing Users AND has been accomplished by Notice of Electronic Filing pursuant to Local Administrative Procedure 9(a) on this, the 29th day of October, 2020.

/s/ Mark J. Courtois
MARK J. COURTOIS